

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

CREEDON CONTROLS, INC., a Delaware  
corporation,

Plaintiff,

v.

BANC ONE BUILDING CORPORATION, an  
Illinois corporation, and FOREST ELECTRIC  
CORPORATION, a New York corporation,

Defendants.

C.A. NO. 05-CV-300-JJF

JURY TRIAL DEMANDED

**AFFIDAVIT**

STATE OF DELAWARE

:  
: SS  
:

COUNTY OF NEW CASTLE

Be it remembered, that on this 8<sup>th</sup> day of June, 2005, personally appeared before me, the subscribed, a notary public in and for the State and County of foresaid, Scott A. Capaldi, Assistant Vice President, JPMorgan Chase & Co., who being by me first wholly sworn according to law, do depose and say that the facts stated in the foregoing Answer, Affirmative Defenses are true and correct, that he verily believes that there is a legal defense to the whole cause of action because:

1. I am authorized to execute this affidavit, and have knowledge regarding the project and the issues underlying this claim;
2. The applicable contract between the parties, Creedon Controls, Inc. ("CCI") and Banc One Building Corporation ("Banc One") is Single Project Construction Services Agreement Contract No. 6B (the "Agreement").

3. Banc One paid for any and all materials and labor, if any, provided by or performed by CCI;

4. CCI did not perform any work that would qualify, under the terms of the Agreement, as extra or additional work;

5. Any additional or extra work performed by the CCI was not authorized by Banc One in accordance with the terms of the Agreement;

6. No change orders were submitted or approved relating to the claims now being made in the Complaint;

7. CCI failed to comply with the terms of the Agreement by, including but not limited to, failing to submit Change Orders and Field Requests;

8. Banc One did not approve the claimed amount that CCI is now seeking payment for;

9. CCI executed waivers and releases of liens for the work performed;

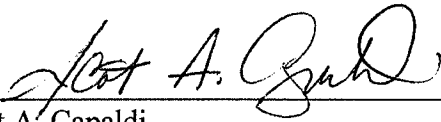
10. CCI failed to abide by the terms and conditions of the Agreement

11. The claims submitted by CCI are unsupported by the events that occurred during the course of the project;

12. CCI failed to execute the necessary documents and the Agreement thus precluding any further payment by Banc One;

13. CCI has not presented any valid evidence pursuant to the Agreement justifying the payments it now seeks; and

14. Banc One reserves the right to supplement and present additional defenses to be identified during the course of discovery.

  
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Scott A. Capaldi  
Assistant Vice President  
JPMorgan Chase & Co.

DATED: 6/8/05

STATE OF DELAWARE :  
COUNTY OF NEW CASTLE : SS  
:

Sworn to and subscribed before me this 8 day of June, 2005.

  
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Notary Public

My Commission Expires:

**ADMITTED TO DELAWARE BAR 12/17/02**  
**ATTORNEY**  
**JENNIFER ZELVIN**  
**NOTARY**  
**UNIFORM LAW ON NOTARIAL ACTS**  
**PURSUANT TO 29 DEL.C. SEC 4323(3)**